



**THE COMMONWEALTH OF MASSACHUSETTS**

***Appellate Tax Board***

100 Cambridge Street  
Suite 200  
Boston, Massachusetts 02114

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(617) 727-6234 FAX

**Docket No. X309063**

**MICHAEL BICHO,  
Appellant.**

**v.**

**BOARD OF ASSESSORS OF THE TOWN OF WESTPORT,  
Appellee.**

**DECISION WITH FINDINGS**

The assessors' Motion to Dismiss ("Motion") is allowed and the appeal is dismissed for lack of jurisdiction. On the basis of the documents submitted in support of the Motion and the arguments advanced at the May 17, 2021 hearing of the Motion, the Board finds and rules as follows.

This appeal concerns the fiscal year 2020 assessment ("fiscal year at issue") of real estate tax on property located at 9 Sandpiper Drive ("subject property"). Evidence submitted by the assessors shows that the tax bill for the fiscal year at issue exceeded \$5,000 and that the appellant failed to timely pay the first-quarter installment of the real estate tax bill for the fiscal year at issue. The appellant acknowledged the late payment.

The assessors also submitted evidence showing that the average of the prior three years' taxes on the subject property was \$8,655 and that the appellant failed to make the necessary payments to satisfy the three-year average provision under G.L. c. 59, §§ 64 and 65.

The Board has no jurisdiction over an appeal when: (1) the tax due for the fiscal year exceeds \$5,000; (2) interest is incurred on the tax bill; and (3) the three-year average provision under G.L. c. 59, §§ 64 and 65 is not met. See, e.g. ***Massachusetts Inst. of Tech. v. Assessors of Cambridge***, 422 Mass. 447, 451-52 (1996); ***Columbia Pontiac Co. v. Assessors of Boston***, 395 Mass. 1010, 1011 (1985) (ruling that payment of the full amount of the tax due without incurring interest charges is a condition precedent to the board's jurisdiction over an abatement appeal).

In the present appeal, the tax on the subject property exceeded \$5,000. Further, the appellant incurred interest by operation of law because the first-quarter bill was paid

late, and the appellant failed to make payments sufficient to satisfy the three-year average provision of G.L. c. 59, §§ 64 and 65.

The appellant observes that he purchased the subject property shortly before the issuance of the tax bill at issue in this appeal, and the bill was sent to the property's prior owner. Consequently, the appellant did not receive the bill. Failure to receive the tax bill, however, does not confer jurisdiction on the Board where a taxpayer fails to timely pay the bill. See ***Bible Baptist Church v. Assessors of Plymouth***, 391 Mass. 1015, 1016 (1984); see also ***Gargano v. Assessors of Barnstable***, Mass. ATB Findings of Fact and Reports 2003-501, 521.

The Board has only that jurisdiction conferred on it by statute. ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 732 (1982). Adherence to the statutory prerequisites is essential "to prosecution of appeals from refusals to abate taxes." ***New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth***, 368 Mass. 745, 747 (1975); ***Old Colony R.R. Co. v. Assessors of Quincy***, 305 Mass. 509, 511-12 (1940). The Board cannot waive jurisdictional requirements.

Accordingly, the Motion is allowed and the appeal is dismissed for lack of jurisdiction.

#### APPELLATE TAX BOARD

/s/ Thomas W. Hammond, Jr. Chairman  
/s/ Patricia M. Good Commissioner  
/s/ Steven G. Elliott Commissioner  
/s/ Patricia Ann Metzger Commissioner  
/s/ Mark J. DeFrancisco Commissioner

Attest: /s/ William J. Doherty  
Clerk of the Board

Property Address: 9 Sandpiper Drive

Date: May 27, 2021

**NOTICE:** Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.